

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the Santa Clara Valley Transportation Authority's refusal to file an application for the widening of I-880 over the Authority's light rail line at North First Street in the City of San Jose, California, as required by California Public Utilities Code sections 1201 et seq. and 99152, and order to show cause why the Authority should not be ordered to file an application for Commission approval.

FILED
PUBLIC UTILITIES COMMISSION
SEPTEMBER 18, 2003
SAN FRANCISCO OFFICE
I.03-09-030

ORDER INSTITUTING INVESTIGATION
AND ORDER TO SHOW CAUSE

SUMMARY

The Commission Rail Crossing Engineering Section (staff) has repeatedly requested the Santa Clara Valley Transportation Authority (VTA) to file an application for the widening of I-880 over the VTA's light rail line at the grade-separated crossing at North First Street in the City of San Jose.

On March 14, 2003, Mr. Haji Jameel, Supervising Transportation Engineer for staff, wrote to Mr. Jeff Funk of the VTA requiring that VTA file an application "as described in Rule 39 of the Commission's Rules of Practice and Procedure." Staff requested a written response by March 28, 2003. (See Attachment A)

On March 27, 2003, VTA responded in writing to Mr. Richard W. Clark, Director of the Consumer Protection and Safety Division of the Commission. In that letter, VTA asserted that it did "not believe it [was] legally required to file an application for CPUC safety approval for this construction." VTA also asserted that "[p]ractically speaking, the safety of this highway project, as it might affect the LRT [light rail transit] line, is a matter under the supervision and control of the (California) Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA). VTA is

constructing this project under the direction of those agencies.” VTA also asserted that staff’s demand for application was without authority because it is a “public agency” and neither a railroad nor a street railroad for purposes of California Public Utilities Code sections 1201 et seq. Further, VTA claimed that California Public Utilities Code section 99152 does not apply because “no aspect of this highway construction project modifies the existing design, construction or operation of the LRT line.” In addition, VTA disputed the Commission’s jurisdiction on the ground that the only possible safety concern in widening the Interstate highway over its LRT line is structural with respect to the highway “which is under the total control of Caltrans.” (See Attachment B)

On May 2, 2003, the Commission’s Acting General Counsel, Lionel B. Wilson, wrote to VTA, directing VTA to file an application for the overpass or cease construction. This letter noted that the “Commission has the exclusive power to prescribe the manner of the crossing alteration. (See Cal. Pub. Util. Code §1202 (b).)” The letter also stated that while Caltrans is the “lead agency for the project under CEQA”, this unfortunately “does not relieve the Commission of its duty to review all environmental impact statements/reports as the responsible agency under CEQA.” (See Attachment C)

On May 27, 2003, VTA responded by stating that there was “nothing sated in your letter which changes our view that the CPUC has only safety oversight jurisdiction over publicly-owned light rail systems, including their crossings, and that the statutes cited in support of the CPUC’s position apply only to those crossings of investor-owned railroad and street railroad corporations.” (See Attachment D)

On June 24, 2003, Patrick S. Berdge, staff counsel, wrote VTA providing notice of pending enforcement action. This letter noted that VTA had maintained that California Public Utilities Code sections 1201 et seq. did not apply to it in A.01-01-003 but stated that staff directed VTA to “submit a formal Application for widening I-880 . . . pursuant to California Public Utilities Code section 99152.” The letter also noted that with “respect to safety, the Commission is concerned, among other things, with the falsework for the I-880 expansion that affects the VTA right-of-way.” (See Attachment E)

On July 7, 2003, VTA wrote Mr. Berdge that “[c]ompelling an application which covers work beyond its [the Commission’s] subject-matter jurisdiction would be unlawful.” Further, VTA stated that “VTA has no reason to believe the bridge-widening will have any effect upon the safety of the LRT corridor.” Therefore, the VTA concluded, “VTA will not file an application over a construction project which is largely, if not entirely, outside the Commission’s jurisdiction.” (See Attachment F)

JURISDICTION

California Public Utilities Code section 1202 provides in pertinent part:

The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.
- (b) To alter, relocate, or abolish by physical closing any crossing set forth in subdivision (a).

Rule 39 of the Commission’s Rules of Practice and Procedure¹ provides:

When the political subdivision or governmental authority having jurisdiction desires to widen, relocate, or otherwise alter an existing crossing, the application shall show the information required by Rule 38, except that the crossing number of the crossing proposed to be altered shall be stated, instead of the information required by Rule 38(b).

The California Legislature has delegated safety oversight of public transit guideway systems to the Commission pursuant to Title 49 Code of Federal Regulations (C.F.R.) Part 659.1.²

¹ Title 20 California Code of Regulations, section 39.

California Public Utilities Code section 99152 provides:

Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures.

The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

...

The commission shall enforce the provisions of this section.

VTA

VTA is a transit system established under California Public Utilities Commission sections 100000 et seq. It is subject to the Commission's safety oversight under California Public Utilities Commission section 99152. The VTA's crossings are subject to California Public Utilities Commission sections 1201 et seq.³

NON-COMPLIANCE

VTA has failed to file an application for the widening of this grade-separated crossing over its light rail line after three demands were made on the transit system. Further, VTA refuses to file an application for the widening of this overpass alleging that the Commission is without jurisdiction.

ATTACHED DOCUMENTS

Copies of the following letters are attached.

- Letter from Mr. Haji Jameel to VTA dated March 14, 2003, requesting an application. (Attachment A)

² "This part implements 49 U.S.C. 5330 by requiring a State to oversee the safety of rail fixed guideway systems through a designated oversight agency." (49 C.F.R. Part 659.1) See also Cal. Pub. Util. Code §§ 100000 et seq. establishing the Santa Clara County Transit District.

³ See D.02-12-053, issued December 17, 2002, for a discussion of why VTA is subject to Cal. Pub. Util. Code §§ 1201 et seq.

- Letter from Benjamin H. Scharf, Senior Assistant Counsel for VTA to Richard W. Clark, Director of Consumer Protection and Safety Division dated March 27, 2003, refusing to file an application. (Attachment B)
- Letter from Lionel B. Wilson, Acting General Counsel of the Commission to Mr. Scharf dated May 2, 2003, directing VTA to file an application or cease construction of the overpass. (Attachment C)
- Letter from Benjamin H. Scharf of VTA to Lionel B. Wilson dated May 27, 2003, refusing to file an application. (Attachment D)
- Letter from Patrick S. Berdge, staff counsel, to Jane P. Kennedy dated June 24, 2003, Chairperson of VTA giving notice of pending enforcement action for failure to file an application for widening the overpass. (Attachment E)
- Letter from Benjamin H. Scharf of VTA to Patrick S. Berdge dated July 7, 2003, refusing to file an application. (Attachment F)

PRELIMINARY FINDINGS

Staff has made a prima facie showing that VTA has refused, and continues to refuse, to file such an application for this construction project. The evidence and safety concerns at this crossing are sufficient to warrant a hearing requiring VTA to demonstrate why it has not filed an application for the project, why it refused to comply with staff's cease and desist letter, and why sanctions should not be imposed for its continued refusal and non-compliance.

ORDER

For good cause shown, as set forth in the declaration attached to this order dated August 21, 2003.

IT IS ORDERED that:

1. Investigation 03-09-030 is opened for the purposes of investigating (a) VTA's refusal to file an application with the Commission for widening the I-880 overpass at the grade-separated crossing at North First Street in the City of San Jose over the VTA's light rail line.
2. On October 16, 2003, at 10:00 a.m., at 505 Van Ness Avenue, San Francisco, California, the VTA shall show cause why it should not be ordered to comply with California Public Utilities Code sections 1201 et seq. and 99152, by filing an

application for the construction project at North First Street in the City of San Jose, and why sanctions should not be imposed for its previous repeated refusals to comply.

3. The VTA, the City of San Jose, and the County of Santa Clara, and any other interested parties, may present evidence and/or argument at the hearing on the order to show cause.

4. This proceeding shall be categorized as an adjudicatory proceeding pursuant to Rule 6(c)(1) of the Commission's Rules of Practice and Procedure.⁴ The arguments concerning the legal validity and applicability of Public Utilities Code sections 1201 et seq. and 99152 and the facts concerning the Commission's safety oversight of the VTA's transit system, are adjudicatory in nature.

5. All ex parte contacts concerning adjudicatory issues are prohibited. (Rule 7(b).)

6. The need for a hearing is demonstrated by the safety concerns raised by staff's allegations and the VTA's refusal to file an application for widening the overpass at this crossing.

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⁴ Title 20, California Code of Regulations, § 6(c)(1).

7. The Executive Director shall cause a copy of this order to be served upon VTA's representatives Benjamin H. Sharf, Senior Assistant Counsel, Valley Transportation Authority, 3331 North First Street, San Jose, California 95134-1906, and JANE P. KENNEDY, VTA Chairperson, Santa Clara Valley Transportation Authority, 3331 North First Street, Building B-2 San Jose, CA 95134-1927.

This order is effective today.

Dated September 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ SUSAN P. KENNEDY
Commissioner

ATTACHMENT A

[Letter from Mr. Haji Jameel to VTA dated March 14, 2003,
requesting an application]

(available in PDF format)

ATTACHMENT B

[Letter from Benjamin H. Scharf, Senior Assistant Counsel for VTA
to Richard W. Clark, Director of Consumer Protection and Safety Division
dated March 27, 2003, refusing to file an application]

(available in PDF format)

ATTACHMENT C

[Letter from Lionel B. Wilson, Acting General Counsel of the Commission to Mr. Scharf dated May 2, 2003, directing VTA to file an application or cease construction of the overpass]

(available in PDF format)

ATTACHMENT D

[Letter from Benjamin H. Scharf of VTA
to Lionel B. Wilson dated May 27, 2003,
refusing to file an application]

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ATTACHMENT E

[Letter from Patrick S. Berdge, staff counsel,
to Jane P. Kennedy dated June 24, 2003, Chairperson of VTA
giving notice of pending enforcement action for failure to file
an application for widening the overpass]

(available in PDF format)

ATTACHMENT F

[Letter from Benjamin H. Scharf of VTA
to Patrick S. Berdge dated July 7, 2003,
refusing to file an application]

(available in PDF format)